

REMARKS/ARGUMENTS

These remarks are submitted in response to the Office Action dated July 18, 2008 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Examiner is expressly authorized to charge any deficiencies to Deposit Account No. 50-0951.

Claim Rejections – 35 USC §§ 102 & 103

Claims 1-3, 5-9, 16-18, and 20-24 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Published Patent Application No. 2001/0014868 to Herz (hereinafter Herz). Claims 4, 10-13, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Herz in view of U.S. Published Patent Application 2001/0039514 to Barenbaum (hereinafter Barenbaum).

Although Applicants respectfully disagree with the rejections, Applicants have amended Claim 1. Applicants have cancelled Claims 10-24. However, Applicants are not conceding that the remaining claims as originally formulated or the cancelled claims fail to present patentable subject matter. The amendments and cancellations are solely for the purpose of expediting prosecution. Accordingly, neither the amendments nor cancellations should be interpreted as the surrender of any subject matter, and Applicants expressly reserve the right to present the original version of any of the amended claims in any future divisional or continuation applications from the present application.

As discussed herein, the claim amendments are fully supported throughout the Specification. No new matter has been introduced by the claim amendments.

The Claims Define Over The Prior Art

Herz focuses on up-selling and cross-selling as a way of driving sales. As such, Herz's subject matter is completely different from that of the present invention which focuses on a (potentially) separate inventory system that the present invention uses as an

input to determine what products need to be moved. The shopping stimulation system identifies one or more consumers in need of the products that need to be moved.

On page 3 of the Office Action, the Examiner has equated the "obsolete product" as recited in Claim 1 with the "computer system in need of upgrade" in Herz. Merriam-Webster On-line Dictionary defines "obsolete" as "no longer in use or no longer useful." Paragraph [0246] of Herz states: "As another example, an expert system might recommend a particular set of upgrades to a computer system, perhaps both by asking a set of questions to management and by consulting system logs that document the demands placed on the existing system and the consequent performance." Clearly, in Herz, the computer is being used; it is not obsolete. For example, assuming there are square pegs and square holes, when the next version of the holes are round, the square pegs are obsolete. They cannot be upgraded. They have to be replaced even though they are perfectly fine square pegs. This example clearly illustrates the difference between "obsolete" and "upgrade."

Barenbaum detects overstocked products and offers them to the customer. It is noted that moving over-stocked items has nothing to do with identifying obsolete products and identifying and offering up items that the customer will buy to replace the obsolete products. The examples Barenbaum (see paragraph [0018]) uses in need of replacement have to do with such things as seats for a show and overripe strawberries. It should be noted that unsold seats and overripe fruit do not fit in the "obsolete" category. Rather, they become worthless, unusable, wasted. They do not remain, like obsolete items do, in working condition but "no longer in use or useful."

It was asserted on page 13 of the Office Action that Herz teaches obtaining demographic information about shoppers (see paragraph 31) and using the information to target offers to the shoppers mailing address or electronic mail (see paragraph 51). However, it is noted that the present invention concerns determining the appropriate communication mode for delivering the promotional material based upon communication mode information uniquely corresponding to the particular consumer. In contrast, Herz

concerns determining which shoppers are to be targeted based on demographic information.

The present invention solves a business problem that is not solved by any prior art. Consider the case where a warehouse is expected to take delivery of a truckload or rail car load of item 'A' next week and that the current warehouse capacity to stage item 'A' is limited due to poor or slow sales. This is where the present invention can help by first offering promotions for item 'A' to shoppers likely to purchase it in an attempt to alleviate the impending warehouse storage problem. Herz or Barenbaum does not link to a supply chain (i.e., merchant inventory system) like the present invention.

The present invention has connections to merchant inventory systems so that shoppers may be enticed to make specific purchases to ease a pending or impending inventory crisis (see Specification, p. 9, lines 13-16, "Moreover, the invention can identify such customers based upon a merchant request or in the event of a business necessity, such as a merchant having excess inventory, a merchant experiencing a revenue shortfall, a merchant receiving a shipment of goods . . . ;" and p. 21, lines 8-19, "For example, the merchant can have excess inventory or require warehouse space to accommodate a new shipment of product. Accordingly, the merchant can request that the CSS identify consumers in an effort to sell product to those consumers thereby making space for new product shipments. Alternatively, the CSS automatically can be responding to an identified business necessity as determined by accessing the merchant inventory management system and purchase history database. For example, the CSS can determine statistical norms of inventory levels from the merchant's inventory management system. Thus, deviation from those established norms can cause the CSS to respond by identifying consumers likely to purchase or needing the excess product. Another embodiment can allow the merchant to provide the CSS with inventory parameters or guidelines specifying acceptable amounts of inventory at particular times of the year.") Herz describes a method of presenting customer promotions (prices, item, etc.) based on a shopper's profile and history in order to drive sales. Herz lacks the

requisite tie to the merchant inventory system and hence cannot create a custom promotion to address an inventory crisis, especially an impending one which Herz cannot predict.

Accordingly, the cited references, alone or in combination, fail to disclose or suggest each and every element of Claim 1, as amended. Applicants therefore respectfully submit that amended Claim 1 defines over the prior art. Furthermore, as each of the remaining claims depends from Claim 1 while reciting additional features, Applicants further respectfully submit that the remaining claims likewise define over the prior art.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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